

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Stephen J. Williams,
Petitioner

v

Case No. 07-668-L
Docket No. 2007-909

Office of Financial and Insurance Regulation,
Respondent

For the Petitioner:

Timothy Williams
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Brighton, MI 48116

For the Respondent:

David Silver
Department of Attorney General
Insurance and Banking Division
P.O. Box 30212
Lansing, MI 48909

Issued and entered
this 21st day of October 2008
by Ken Ross
Commissioner

FINAL DECISION

BACKGROUND

This case concerns an application for a Michigan insurance producer license. Petitioner applied for the license in June 2006. The license was denied for the reason that Petitioner had been convicted of a felony in the state of New York in 2001. Petitioner challenged the license denial and requested a hearing before the Commissioner of Financial and Insurance Regulation.

Following a series of prehearing motions and orders, the parties agreed to present their cases in written briefs and stipulated facts and exhibits. The parties agreed to a series of stipulated facts including the following:

1. On February 8, 2001, Petitioner pled guilty and was convicted of Attempted Criminal Possession of a Controlled Substance in the Fourth Degree, a Class D felony in the State of New York.
2. Petitioner was sentenced to five years' probation.
3. As part of the criminal conviction in New York, the Hon. Jerry J. Scarano, Judge of the County Court for Saratoga County, State of New York, issued to Petitioner a Certificate of Relief from Disabilities.
4. Petitioner served his sentence in Livingston County, Michigan, by agreement between the State of Michigan and the State of New York.
5. Petitioner duly satisfied all the terms and conditions of his probation, having served his sentence, and due to improvement, was released from his sentence at the end of 36 months, on June 7, 2004.
6. On June 22, 2006, Petitioner sat for and passed the State of Michigan examination required for the issuance of an Accident and Health Insurance Producer's license.
7. On June 27, 2006, Petitioner submitted an application for a license.
8. Petitioner disclosed his conviction and Certificate of Relief from Disabilities.
9. Respondent denied Petitioner's application for the license pursuant to MCL 500.1205(1)(b) and 1239(1)(f).

The parties filed joint stipulated exhibits and written briefs in March 2008. The Administrative Law Judge (ALJ) closed the evidentiary record on April 9, 2008 and issued a Proposal for Decision (PFD) on July 1, 2008.

The ALJ recommended that the Commissioner deny Petitioner's application for an insurance producer's license. Petitioner filed exceptions on July 21, 2008. Respondent filed a response on July 31, 2008.

The stipulated exhibits and the facts enumerated above are adopted and made part of this final decision. The ALJ's analysis of the legal issues and his conclusions of law are not adopted.

ANALYSIS

The central issue of this case is whether the Petitioner has met the minimum licensing requirements of the Michigan Insurance Code of 1956, (the Insurance Code). The pertinent sections of the Code are provided below. Section 1205(1)(b), MCL 500.1205(1), provides:

(1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

* * *

(b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239.

Section 1239(1)(f), MCL 500.1239(1)(f) provides:

In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

Petitioner has been convicted of a felony in New York and was sentenced to a five year period of probation. Under Michigan's insurance producer licensing statute, license denial is

required. No further inquiry into questions of good moral character or similar areas is permitted by the Insurance Code licensing statute. The question of licensure ends here; the Commissioner does not have the discretion to approve an application where an applicant has been convicted of a felony.

In his brief and exceptions, the Petitioner asserts that the Commissioner's licensing decision is controlled by the Full Faith and Credit Clause of the United States Constitution, Article IV Section 1, which provides:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

According to Petitioner, the Full Faith and Credit Clause requires the Commissioner to give effect to the New York Certificate of Relief from Disabilities which, according to its terms, relieves the Petitioner "of all disabilities and bars to employment. . . ." The Petitioner also refers to additional provisions of the New York statute which are summarized in the Certificate of Relief as follows:

B. A conviction of the crime or the offense specified in the face of this certificate shall NOT cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate. . . .

C. A conviction of the crime or the offense specified on the face of this certificate shall NOT prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified on the reverse side of this certificate as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or renew any license, permit or other authority or privilege.

Petitioner argues that his New York felony conviction cannot be an automatic bar to licensure in Michigan -- the insurance producer licensing decision must honor the restrictions found in the New York statute.

Petitioner invites the Commissioner to apply a federal constitutional doctrine and ignore the plain language of the licensing provisions of the Insurance Code. An administrative agency's powers are limited to those which are found in the agency's enabling statute. The statute in this case requires the Commissioner to deny an insurance producer license to any individual who has been convicted of a felony. The Commissioner is without authority to order a different result based on a federal constitutional argument. See *Dation v. Ford Motor Co.*, 314 Mich. 152, (1946) and *Wikman v City of Novi*, 413 Mich. 617 (1982). In any case, the Full Faith and Credit Clause does not require one state to apply another state's law in violation of its own legitimate public policy. *Nevada v Hall*, 440 U.S. 410 (1979).

Finally, Petitioner has referred to the Commissioner's decision in *Mazur v Office of Financial and Insurance Services* (Case No. 03-384-L; Docket No. 2003-1515). Petitioner has pointed out that, after *Mazur*, a number of insurance producer licenses were issued to individuals with felony convictions. Petitioner argues that either *Mazur* does not state a rule adopted by this agency through adjudication, or that the *Mazur* rule was abandoned as evidenced by later decisions to issue licenses to individuals with felony convictions. Petitioner's argument here is

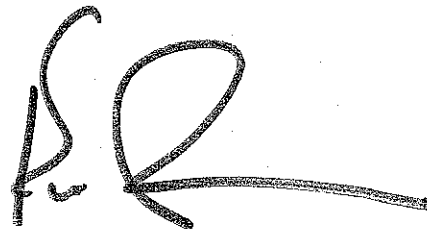
not persuasive. Since May 2004, when the Commissioner issued the final decision in *Mazur*, it has been the formally stated policy of this agency that insurance producer licenses cannot be issued to individuals with felony convictions. This policy is required by the Michigan statutes which state the requirements for insurance producer licensing. The *Mazur* decision and all subsequent contested case licensing decisions are consistent in adhering to the statutory requirement that producer licenses not be issued to individuals with felony conviction.

It is not disputed that a number if insurance producer licenses were issued to individuals who had been convicted of felonies. Issuing an insurance producer license to an individual with a felony conviction constituted an error by the OFIR staff. When an error in licensing practices is discovered, the remedy is to correct the error and revoke the license. See *Elliott v Liquor Control Commission*, 339 Mich 78 (1954), and *Kassab v Acho*, 150 Mich App 104 (1986). This agency is completing the process of revoking those licenses.

The Commissioner concludes that Respondent, by virtue of his New York felony conviction, is not qualified to hold a Michigan insurance producer license.

ORDER

Therefore, it is ORDERED that the Petitioner's application for an insurance producer license is denied.

A handwritten signature in dark ink, appearing to be 'KR' followed by a long horizontal stroke.

Ken Ross
Commissioner